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CIRCULAR.

NEW YORK, March 17, 1887.

IN THE MATTER OF OPPOSING THE ARCADE RAILWAY COMPANY.

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The Committee acting for the property owners on Broadway and Madison avenue who oppose the Arcade scheme has refrained from publishing its views in the newspapers, but issues this circular to apprise its constituents and other owners on the imperiled streets of the present situation.

THE SUIT.

The Committee is in no way changed in its opinion by the recent decision of a single Judge at Special Term refusing to declare the Act of 1886 unconstitutional. The Committee forbears to discuss the decision, but has entire and unimpaired confidence, in which its counsel fully concur, that a decision by the higher Courts will overthrow the monstrous provisions of the statute of 1886. The case has been appealed and the Committee entertains no doubt whatever that the rights of the property owners will be sustained, and the pretences of the Arcade Company forever ended.

A NEW AND IMPORTANT DECISION.

The important decision of the Court of Appeals in the recent case of Lahr against the Metropolitan Elevated Road is equally applicable to an underground road. This decision holds that abutting property owners have *proprietary rights* in the easements of light, air and access as appurtenant to the bed of the street as well as to their buildings, and are entitled to protection from disturbances of every kind not incident to the ordinary surface use of the street. It holds accordingly that the builders of such a railroad are liable to abutting owners for all damages, direct and indirect; and these damages, including loss of rents, in the case of an Arcade Road, and especially during its construction, would be enormous.

A DECEPTIVE CIRCULAR.

Your Committee also calls attention to a recent circular, illustrated by diagrams, addressed by the Arcade Company to the property-owners. This circular, although styled a "correct statement" is grossly and dangerously deceptive, both in what it says and what it omits to say. It states that "the Railway is restricted to 44 feet **or** curb to curb," but it fails to say that the Act of 1868 gives it the exclusive use of 44 feet where the roadway is less than 44 feet in width, as between Madison and Union Squares, or on Madison avenue, and gives it 60 feet on Broadway at Twenty-third street and for miles above Thirty-fourth street. In other words, and in fact, it gives from curb to curb whatever the distance between curbs, but wherever the distance between curbs is less than 44 feet it gives that number of feet for its tracks without regard to the curbs.

It states that the Act of 1874 gave it 35 feet, whereas it gave it 32 feet only, outside measurement.

It states “ *That the space under the sidewalks is not taken, but remains as at present for vaults, or the exclusive use of the property-owners.*” And in the conspicuous diagrams which form part of the circular it pretends to show that its proposed structures will be confined to the centre of the street and will not interfere with vault rights, sidewalks or approaches to buildings. Its false pretences are obvious at a glance, for it utterly ignores the presence or necessity of side tracks, turnouts, stations, depots, approaches, apertures for light and air, and spaces for sewers; all of which structures are authorized by its charter and will be well nigh continuous on each side of the entire roadways and up to the very foundation of buildings.

All doubt as to the intention of the Arcade Company in this respect is removed by the following extract from its Act of 1886 (Sec. 8): “ *Such company may, at such points, as it shall deem suitable and necessary, open or excavate and use below the existing surface of any street, avenue, square or public place, or any side or crosswalk adjacent to any street, avenue, park, square or public place, under or along which its roadbed shall run, a space of such width and length as it shall require for the location and construction of depots or stations, and the necessary platforms and approaches. In the spaces so opened or excavated such company shall lay substantial footways, and connect the same by stairways or other suitable ways or means of communication, with the street surface of any such walk, street, avenue, park or public place. Whenever any excavation or opening, contemplated in this section, is made * * * the said company may, for the purpose of affording light and air to its railways or stations, platforms and approaches and the sub-surface walks, keep and maintain open grated spaces, not exceeding six feet in width, from and along the house line on each side of any street, avenue or public place under which its main or branch line shall be constructed.*”

The absurd pictures circulated by the Arcade Company need deceive no one. We must look to the provisions of the law to ascertain what the Arcade schemers mean to do. The vast sums of money and the political combinations which secured the enactment of this law were not provided except with the intention of using the full powers conferred, although their use would bring disaster upon public and private property of inestimable values.

The diagram sent herewith is a correct exhibit of the sweeping grant of space made to the Arcade Company by the Act of 1886, *which we hold to be unconstitutional.*

GENERAL COMMITTEE.

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EXECUTIVE COMMITTEE.

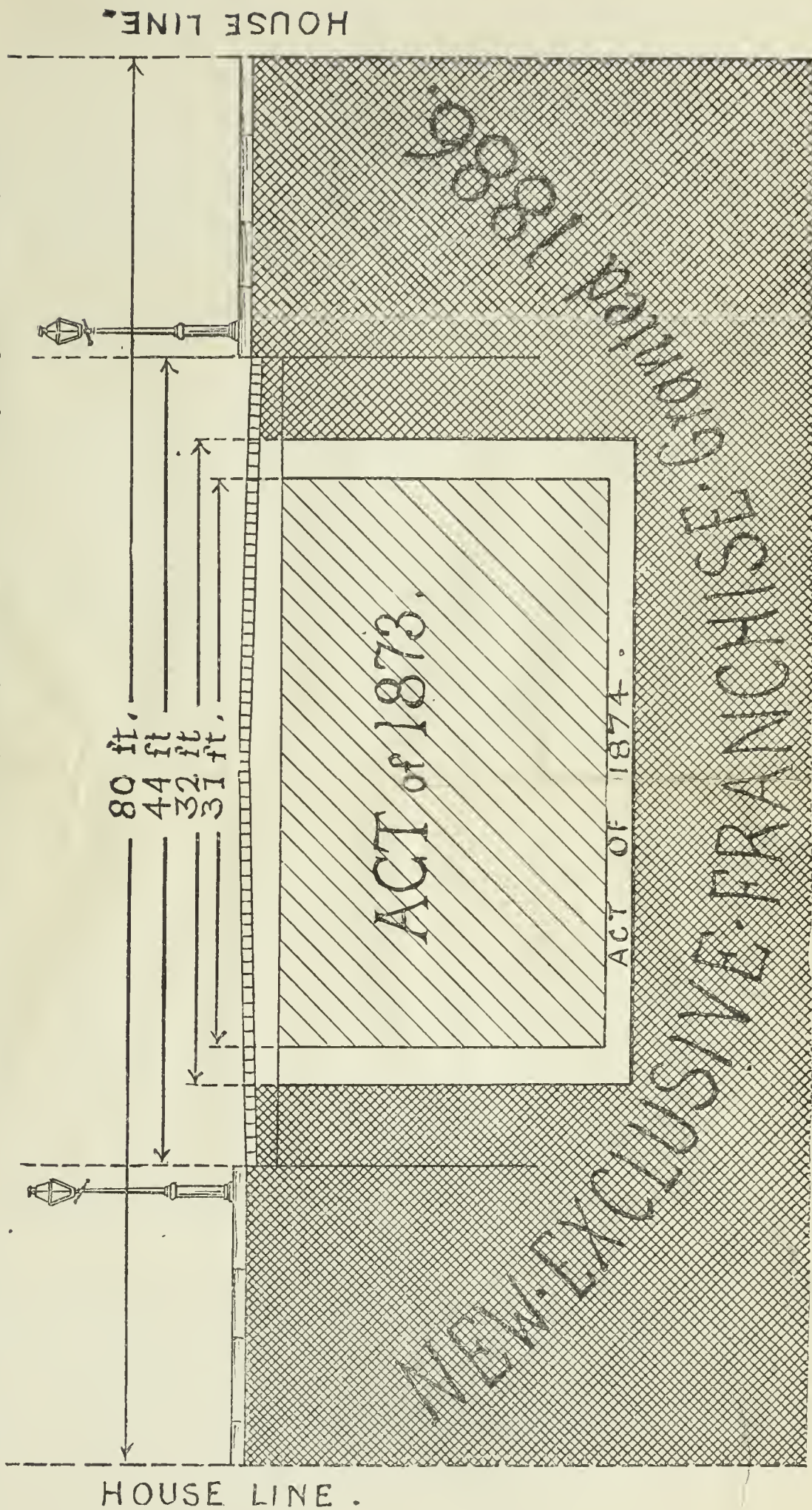
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EDWARD MITCHELL,

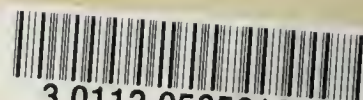
HERMANN H. CAMMANN.

FIGURE 1

Section of Broadway showing the new exclusive privileges, immunities and franchise granted to the New York Arcade Railway Co., by the Act of 1886, being in contravention of the provisions of the Constitution of the State of New York, as amended January 1st, 1875, Art. 3, Sec. 18, and showing the absorption of the whole street, sidewalk, vault and area, from house-line to house-line, and to any depth, at the Company's sole option.



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